

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #8	CCRB Case #: 201504644	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/08/2015 10:47 PM, Wednesday, 06/17/2015	Location of Incident: East 102nd Street between Second and Third Avenue	Precinct: 23	18 Mo. SOL 12/8/2016	EO SOL 12/8/2016	
Date/Time CV Reported Tue, 06/09/2015 8:40 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/09/2015 8:40 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Gili	728	954622	HBM IRT
2. POM Artur Espenberg	24642	952713	HBM IRT
3. POF Yaris Gonzalez	27403	948346	HBM IRT
4. POM Giuseppe Gentile	09948	952773	HBM IRT

Officer(s)	Allegation	Investigator Recommendation
A.POF Yaris Gonzalez	Abuse: On June 8, 2015, PO Yaris Gonzalez threatened to arrest § 87(2)(b)	
B.POF Yaris Gonzalez	Abuse: On June 8, 2015, PO Yaris Gonzalez refused to provide her name and shield number to § 87(2)(b)	
C.POM Richard Gili	Abuse: On June 8, 2015, PO Richard Gili refused to provide his name and shield number to § 87(2)(b)	
D.POM Artur Espenberg	Abuse: On June 8, 2015, PO Artur Espenberg refused to provide his name and shield number to § 87(2)(b)	
E.POM Artur Espenberg	Abuse: On June 8, 2015, PO Artur Espenberg threatened to arrest § 87(2)(b)	
F.POF Yaris Gonzalez	Discourtesy: On June 8, 2015, and June 17, 2015, PO Yaris Gonzalez spoke rudely to § 87(2)(b)	
G.POF Yaris Gonzalez	Abuse: On June 17, 2015, PO Yaris Gonzalez detained § 87(2)(b)	
H.POF Yaris Gonzalez	Abuse: On June 17, 2015, PO Yaris Gonzalez interfered with § 87(2)(b)'s ability to record an incident.	
I.POM Giuseppe Gentile	Discourtesy: On July 17, 2015, PO Giuseppe Gentile spoke rudely to § 87(2)(b)	

Case Summary

On June 8, 2015, at approximately 10:47 p.m., in the vicinity of East 102nd Street between Second and Third Avenues in Manhattan, § 87(2)(b) was recording an interaction between officers, including PO Yaris Gonzalez, PO Richard Gili, and PO Artur Espenberg from the Housing Bureau Manhattan Impact Response Team, and an unidentified civilian who the officers suspected of violating open container laws. § 87(2)(b) alleged the following: PO Gonzalez threatened to arrest him (**Allegation A**). § 87(2)(b) asked her for her name and shield number, and she did not provide this information (**Allegation B**). § 87(2)(b) also asked PO Gili and PO Espenberg for their names and shield numbers, and they did not provide their information (**Allegations C and D**). PO Espenberg threatened to arrest § 87(2)(b) (**Allegation E**). PO Gonzalez called him a “fucking dick” (**Allegation F**).

On June 17, 2015, at approximately 9:04 p.m., in the vicinity of East 102nd Street between Second and Third Avenues in Manhattan, § 87(2)(b) approached a group of officers, including PO Gonzalez and PO Giuseppe Gentile from the Housing Bureau Manhattan Impact Response Team. § 87(2)(b) alleged the following: PO Gonzalez called § 87(2)(b) a “fucking pussy” and a “fucking loser” (subsumed in **Allegation F**). PO Gonzalez took his phone, interfering with his ability to record the incident (**Allegation G**). PO Gonzalez placed him in handcuffs and detained him for 45 minutes (**Allegation H**). PO Gentile called § 87(2)(b) a “fucking loser” (**Allegation I**).

§ 87(2)(b) provided a video from each incident date. The video from the first incident was edited by § 87(2)(b) to shorten the length of the video from 27:00 to 7:44. The content of the shorter version is consistent with the longer, and will be referenced throughout this report (Board Review 1). The video of the incident on June 17, 2015, is 47:00 in length (Board Review 2).

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation due to § 87(2)(b)'s statement that he is filing a lawsuit (Board Review 3).
- On August 14, 2015, a FOIL request revealed that a Notice of Claim had not been filed in regard to these incidents (Board Review 4).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]).

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED].
- PO Gonzalez has been a member of service for six years and has nine total allegations, including the five from this case (Board Review 7). None of her previous allegations have been substantiated. In case 201212166, threat of force and discourtesy allegations were made, and they were unsubstantiated.
- PO Gili has been a member of service for two years, and this is his first CCRB case (Board Review 8).
- PO Espenberg has been a member of service for three years, and this is his first CCRB case (Board Review 9).

- PO Gentile has been a member of service for three years, and this is his first CCRB case (Board Review 10).

Findings and Recommendations

Allegations not Pleaded

- **Abuse of Authority:** § 87(2)(b) alleged that on June 17, 2015, PO Gonzalez refused to provide her name and shield number when he asked. The second video shows that the first interaction between them on this date was when § 87(2)(b) approached her at 00:56 and yelled, “Is that you, Gonzalez?” indicating that he knew who she was before he asked her for her name and shield number (Board Review 2). § 87(2)(b) it is clear that § 87(2)(b) already had her information when he asked, § 87(2)(g)

Allegation A-Abuse of Authority: On June 8, 2015, PO Yaris Gonzalez threatened to arrest

§ 87(2)(b) § 87(2)(b) stated that he was using his phone to record an interaction between civilians and officers he did not know. He did not know why the civilians and the officers were interacting, but he heard them yelling at each other. § 87(2)(b) did not say anything or interfere with the officers’ actions. An officer later identified as PO Gili told § 87(2)(b) to “Keep moving—we’re not doing anything wrong.” § 87(2)(b) responded, “Did I say you did anything wrong?” and informed PO Gili that the sidewalk on which he was standing was public property. PO Gonzalez said, “If you’re going to be a smartass, we could bring you in for harassment” (Board Review 3).

PO Gonzalez stated that Sgt. Reyes and PO Garcia of Housing Bureau Manhattan Impact Response Team stopped an unidentified civilian because they suspected that he was violating open container laws (Board Review 11). PO Gonzalez, PO Espenberg, and PO Gili arrived at the stop to provide backup. Approximately one minute after PO Gonzalez arrived at the stop, § 87(2)(b) approached the group, and recorded “everything [the officers] were doing.” PO Gonzalez first noticed § 87(2)(b) when he was “creeping up beside” the officers. She did not know § 87(2)(b) from previous interactions. § 87(2)(b) was closest to PO Gili, and was approximately two to three feet away from him. § 87(2)(b) was approximately five to six feet away from PO Gonzalez. PO Gonzalez could not recall where PO Espenberg was or how far he was from § 87(2)(b). The stop was almost completed when § 87(2)(b) approached. § 87(2)(b) was recording and not saying anything. PO Gonzalez told him to take a walk and that he was blocking the sidewalk. Neither PO Espenberg nor PO Gili said anything to him during the stop. § 87(2)(b) responded that he was exercising his right to record. PO Gonzalez did not notice any civilians paying attention to § 87(2)(b). No other civilians stopped or said anything when § 87(2)(b) started talking. PO Gonzalez asked him to leave because she was worried that his activity would cause a crowd to gather, but it had not actually caused a crowd to gather. She said, “If you’re going to be a smartass, we could bring you in for harassment” because he would not leave and was frustrating her.

PO Gili stated that he first noticed § 87(2)(b) when § 87(2)(b) walked past the officers, who were issuing an open container summons to an unidentified civilian (Board Review 12). § 87(2)(b) was recording, but he was not saying anything. PO Gonzalez told § 87(2)(b) to move back, and § 87(2)(b) said, “I’m exercising a right.” All of the officers told § 87(2)(b) to move back, and § 87(2)(b) repeated that he was exercising his rights. PO Gili thought that § 87(2)(b) was “interfering a little bit,” and “got in the officers’ faces.” § 87(2)(b) was approximately one foot away from PO Gili and PO Gonzalez when they told him to move back. § 87(2)(b) was approximately five or ten feet away from the individual who was stopped and summonsed. When

asked if § 87(2)(b) interfered with any police actions, PO Gili stated that the officers were blocking § 87(2)(b) to make sure that he did not interfere.

PO Espenberg stated that he first noticed § 87(2)(b) when he heard him speaking to PO Gonzalez and PO Gili, and he immediately recognized him “as someone who is constantly instigating officers” (Board Review 13). PO Espenberg was focused on the individual the other officers had stopped, and was not paying attention to § 87(2)(b). PO Espenberg glanced back and saw that § 87(2)(b) was “in the officers’ personal space,” but could not estimate how far this was. PO Espenberg thought that the officers “had it under control—it was just one guy.” § 87(2)(b) was speaking, but PO Espenberg could not recall what he was saying. § 87(2)(b) was “trying to encroach” on the stop, and was “trying to impede, come in, and verbally say things over the top” of the officers. PO Espenberg thought that § 87(2)(b) got “very close” to the officers because he heard PO Gonzalez and PO Gili tell him to back up.

The video establishes that PO Gili initiated conversation with § 87(2)(b) when he says, “What’s up man?” at 00:05, and § 87(2)(b) replies, “Nothing much, you?” PO Gili says, “I’m fine. Keep moving; we’re not doing anything wrong.” § 87(2)(b) says, “Did I say you were doing something wrong?” PO Gili says, “Well, you’re videotaping us.” § 87(2)(b) replies, “It’s a public sidewalk.” PO Gonzalez says, “Okay, sir, good, have a good night.” § 87(2)(b) responds, “You too, have a good night.” PO Gonzalez says, “Good night.” § 87(2)(b) replies, “Good night.” PO Gonzalez says, “Good night. If you’re going to be a smartass, we could bring you in for harassment. Would you like that? You want to come in with us?”

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury New York State Penal Law §240.25 (Board Review 14).

§ 87(2)(g)

Allegation B-Abuse of Authority: On June 8, 2015, PO Yaris Gonzalez refused to provide her name and shield number to § 87(2)(b)

Allegation C-Abuse of Authority: On June 8, 2015, PO Richard Gili refused to provide his name and shield number to § 87(2)(b)

Allegation D-Abuse of Authority: On June 8, 2015, PO Artur Espenberg refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) stated that he asked an officer identified as PO Gonzalez for her name and shield number. She did not reply and turned her body so that he could not read her shield. § 87(2)(b) then asked all of the officers for their names and shield numbers, and they did not provide them.

PO Gonzalez stated that before § 87(2)(b) approached them at the stop, they received a radio call that there was a HAZMAT job at a building in the Washington Houses Development. After the stop, PO Gonzalez and her partners started walking to the job, and § 87(2)(b) asked PO

Gonzalez for her name and shield number. PO Gonzalez did not provide her information because they were walking to the HAZMAT job. There was no other reason that she did not provide what he requested. § 87(2)(b) followed them to the building and waited outside while the officers responded to the job. Approximately ten minutes after they went into the building, the officers exited, walked down the pathway, and ran into § 87(2)(b) in the courtyard. He was recording the officers with his phone. He asked for all of the officers' names and shield numbers. He approached each officer with his phone and focused on their shields while he read their names and shield numbers for the record. PO Gonzalez never verbally provided her information to § 87(2)(b) because it was clear that he had obtained the information he requested by reading her shield.

PO Gili stated that he could not recall if § 87(2)(b) was saying anything as he followed the officers, and he could not recall if he was asking any questions. He could not recall because he was not paying attention to § 87(2)(b). § 87(2)(b) asked PO Gili for his name and shield number after the officers finished the HAZMAT job. PO Gili provided his information by pointing to his shield. He did not provide his information verbally because § 87(2)(b) held his phone very close to his shield so he could capture it in his recording. § 87(2)(b) also read PO Gili's name and shield number back to him, which established that he had obtained his information. PO Gili never refused to provide his name and shield number to § 87(2)(b) at any point.

PO Espenberg stated that § 87(2)(b) asked for all of the officers' names and shield numbers when they were on their way to the HAZMAT job. PO Espenberg responded, "Absolutely, I'll give it to you after the job." PO Espenberg also told § 87(2)(b) that he had something important to do and would give him the information later. He did not provide his information when § 87(2)(b) asked because he could not stop walking to a job to provide his information. When § 87(2)(b) asked the officers again after the HAZMAT job, PO Espenberg provided his by pointing to his shield and allowing § 87(2)(b) to record his information. PO Espenberg never refused to provide his information at any time.

The video establishes that at 00:52, § 87(2)(b) says, "Excuse me, what's your name and badge number, miss?" She does not reply. At 00:56, he says, "Ma'am?" At 00:57, PO Gonzalez says, "It's right there!" and moves her arm toward her chest. § 87(2)(b) replies that he could not see it from where he was. At 00:59, an unidentified male officer says, "We need to go to a 44, right?" and the officers walk away. At 1:02, § 87(2)(b) says, "Are you violating your Patrol Guide? You're not going to identify yourself?" At 1:08, § 87(2)(b) says, "Ma'am? I asked you to identify yourself?" and walks behind the officers. At 1:09, an officer identified as PO Espenberg says, "We're busy on a job, sir." § 87(2)(b) responds, "Doesn't excuse you from identifying yourself. She did threaten me." At 1:14, § 87(2)(b) stated that he would like to file an Internal Affairs report. PO Espenberg says, "Right across the street, sir" and pointed to a building identified by § 87(2)(b) as the 23rd Precinct stationhouse. At 1:23, § 87(2)(b) says, "I need her badge number? Her name? Hello?" and continues walking behind them. At 1:32, he says, "Name and badge number, please?" At 1:41, he says, "No name and badge number? You don't work for the City?" At 2:10, § 87(2)(b) says, "I need her name and badge number." At 2:29, he says, "I still need her badge number and the rest of you guys' badge numbers. I'm gonna need all of your badge numbers." The officers enter a NYCHA building, and § 87(2)(b) waits for them to exit. At 4:11, the officers are walking toward him, and he says, "Name and badge numbers, please?" He repeats this two more times. At 4:19, PO Espenberg approaches § 87(2)(b) and § 87(2)(b) says he cannot read his badge number because there is not enough light. PO Espenberg says, "It's

good enough, you can read it,” and each officer stands while § 87(2)(b) narrates their names and shield numbers for the record.

Patrol Guide procedure 203-09 states that officers are required to courteously and clearly state their names and shield numbers to anyone who requests it (Board Review 15).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation E-Abuse of Authority: On June 8, 2015, PO Artur Espenberg threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that an officer identified as PO Espenberg threatened to arrest him for trespassing. § 87(2)(b) noted that he has previously sued the NYPD for arresting him for trespassing, and that it is unlawful to arrest someone for trespassing in a public place.

PO Espenberg stated that he said this because if § 87(2)(b) did not live there, did not have any business there, or was not visiting someone there, then he could be arrested for trespassing on NYCHA property.

At 2:15, PO Espenberg says, “After we’re done with this job, we’re more than likely—happy—to help you.” § 87(2)(b) says, “I can walk around with you guys.” PO Espenberg says, “If you come into this building and you don’t live here, it’s trespassing.” § 87(2)(b) says, “No it’s not—it’s a public space.” At 2:29, § 87(2)(b) says, “I’m still going to need her badge number and the rest of you guys’ badge numbers.” PO Espenberg repeats, “If you come in the building, you will be arrested for trespassing.”

Patrol Guide procedure 212-60 states that a person is violating Housing Authority rules and regulations if they are present in a NYCHA building and do not live there, are not an invited guest, and have no business in the building (Board Review 16).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation F-Discourtesy: On June 8, 2015, and June 17, 2015, PO Yaris Gonzalez spoke rudely to § 87(2)(b)

The video from incident on June 8, 2015, shows that at 4:45, § 87(2)(b) and the officers are walking in separate directions after § 87(2)(b) has obtained their names and shield numbers. § 87(2)(b) says, “Fucking pig!” and PO Gonzalez responds, “Fucking dick!” The video from the incident on June 17, 2015, shows that at 5:10, § 87(2)(b) calls PO Gonzalez “a fucking pig,” and PO Gonzalez says, “Have a good night, fucking pussy.” At 7:21, PO Gonzalez says, “You can

exercise whatever you like, but don't be calling me a fucking pig." § 87(2)(b) says, "That's free speech." PO Gonzalez says, "If you're going to start with all that bullshit, I'll fucking take you in. Exercise your fucking right because you're a fucking loser. I've seen your stupid videos. You're a fucking loser."

PO Gonzalez acknowledged calling § 87(2)(b) "a fucking dick." She said that because she was frustrated. She acknowledged calling him a "fucking pussy" because he called her a "fucking pig" and she was angry. She called him a "fucking loser" because she was angry.

Patrol Guide procedure 203-09 states that officers must be courteous and respectful when interacting with the public (Board Review 15).

§ 87(2)(g)

Allegation G-Abuse of Authority: On June 17, 2015, PO Yaris Gonzalez interfered with § 87(2)(b)'s ability to record an incident.

Allegation H-Abuse of Authority: On June 17, 2015, PO Yaris Gonzalez detained § 87(2)(b)

At 4:53 of the second video § 87(2)(b) provided, he says, "I'm going to keep complaining against y'all 'til I ruin your careers. You guys better learn your Patrol Guide or you're going to get complaints all day—especially from someone like me—and hanging out with this fucking pig right here, Gonzalez!" He starts backing away from the officers as he says this. PO Gonzalez says, "Have a good night." § 87(2)(b) says, "Fucking pig... Where am I going to go? Have a good night," and continues backing away from the officers. At 5:19, PO Gonzalez approaches § 87(2)(b) grabs his phone, and tells him to put his hands "on the fucking fence." At 5:40, one can hear the handcuffs tightening, and § 87(2)(b) says, "That's tight, that's tight, gotta loosen them." At 7:25, PO Gonzalez says in response to § 87(2)(b)'s claim that "Fuck you, pig" is free speech, "If you're going to start with all that bullshit, I'll fucking take you in. Exercise your fucking right because you're a fucking loser. I've seen your stupid videos. You're a fucking loser."

PO Gonzalez placed him in handcuffs because § 87(2)(b) was "harassing her, bothering her, following her around, making this whole big scene," and she was not "going to stand there and take it." There was no other reason that she placed him in handcuffs. After she handcuffed him, Cpt. Jerry O'Sullivan and Sgt. Reyes of the Manhattan Housing Bureau Impact Response Team arrived, and PO Gonzalez told them that she wanted to charge § 87(2)(b) with disorderly conduct because "there was a group gathering off to [her] left side." In her interview, PO Gonzalez stated that there was group of people sitting on benches approximately ten feet away from the officers. PO Gonzalez did not notice if they were paying attention to the incident. They did not say anything and were not interfering. Cpt. O'Sullivan told PO Gonzalez that the arrest would have to be voided because "he was not annoying or bothering a civilian." A BADS search revealed that § 87(2)(b)'s arrest was voided (Board Review 21). § 87(2)(b) was in handcuffs for almost an hour only because PO Gonzalez was waiting for Cpt. O'Sullivan and Sgt. Reyes to arrive, and once they arrived, they had to decide if they were going to charge § 87(2)(b). PO Gonzalez stated that the only reason she took his phone was because she could not handcuff him with his phone in his hand.

In order to stop someone, an officer must reasonably suspect that the person has committed, is committing, or is about to commit a crime People v. De Bour 40 N.Y. 2d 210

(1976) (Board Review 19). If there is no evidence that bystanders expressed any inclination to involve themselves in the dispute between an officer and a civilian, an officer does not possess probable cause to arrest someone and charge them with disorderly conduct People v. Baker 20 N.Y. 3d 354 (2013) (Board Review 22). Additionally, an arrest made solely out of resentment for disrespecting an officer is a bad faith arrest PD v. Erazo OATH case 78196/02 (2003) (Board Review 18). According to Patrol Guide 208-03, civilians are permitted to photograph, videotape, and record police actions (Board Review 17). Furthermore, recording an incident, using crude or vulgar speech, or requesting officers' names and shield numbers do not constitute probable cause for arrest.

§ 87(2)(g)

§ 87(2)(g)

Allegation I- Discourtesy: On July 17, 2015, PO Giuseppe Gentile spoke rudely to § 87(2)(b)

The video established that at 6:35, PO Gentile said, "I have New York City Police Department written all over my fucking face." At 7:06, PO Gentile said, "Get the fuck out of here, bro." At 7:53, he says, "You're a fucking loser" to § 87(2)(b) three times.

PO Gentile acknowledged that he made these statements (Board Review 20). His reason for saying them was that he was upset with § 87(2)(b)

Patrol Guide procedure 203-09 states that officers must be courteous and respectful when interacting with the public (Board Review 15).

§ 87(2)(g)

Pod: 8

Investigator: _____ Erin Sweeney _____
Signature Print Date

Pod Leader: _____

	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date